

agency funding floor will be capped at the lesser of the percentage of change in appropriated funds or the cumulative percentage change in the inflation rate. If the appropriation for states under the Water Pollution Control State grant program decreases in future years, the funding floor will be disregarded and all interstate agency allotments will be reduced by an equal percentage.

(2) *Variable allotment.* The variable allotment provides for funds to be distributed to interstate agencies on the basis of the extent of the pollution problems in the respective States. Funds not allotted under the base allotment will be allotted to eligible interstate agencies based on each interstate agency's share of their member States' Water Pollution Control grant formula allotment ratios. Updates of the data for the six components of the Water Pollution Control State grant allocation formula will automatically result in corresponding updates to the variable allotment portion of the interstate allotments. The allotment ratios for those States involved in compacts with more than one interstate agency will be allocated among such interstate agencies based on the percentage of each State's territory that is situated within the drainage basin or watershed area covered by each compact.

(d) *Alternative allotment formula.* Notwithstanding paragraphs (b) and (c) of this section, if the Administrator determines that a portion of the funds appropriated under the Water Pollution Control grant program should be allotted for specific water pollution control elements, the Administrator may allot those funds to States and interstate agencies in accordance with a formula determined by him after consultation with the respective States and interstate agencies. The Administrator will make this determination under this paragraph only if EPA's appropriation process indicates that these funds should be used for this purpose.

[66 FR 1734, Jan. 9, 2001, as amended at 69 FR 59812, Oct. 6, 2004; 71 FR 18, Jan. 3, 2006; 73 FR 52590, Sept. 10, 2008; 74 FR 17405, Apr. 15, 2009]

§ 35.165 Maintenance of effort.

To receive a Water Pollution Control grant, a State or interstate agency must expend annually for recurrent section 106 program expenditures an amount of non-federal funds at least equal to expenditures during the fiscal year ending June 30, 1971.

§ 35.168 Award limitations.

(a) The Regional Administrator may award section 106 funds to a State only if:

(1) The State monitors and compiles, analyzes, and reports water quality data as described in section 106(e)(1) of the Clean Water Act;

(2) The State has authority comparable to that in section 504 of the Clean Water Act and adequate contingency plans to implement such authority;

(3) There is no federally-assumed enforcement as defined in section 309(a)(2) of the Clean Water Act in effect with respect to the State agency;

(4) The State's work plan shows that the activities to be funded are coordinated, as appropriate, with activities proposed for funding under sections 205(g) and (j) of the Clean Water Act; and

(5) The State filed with the Administrator within 120 days after October 18, 1972, a summary report of the current status of the State pollution control program, including the criteria used by the State in determining priority of treatment works.

(b) The Regional Administrator may award section 106 funds to an interstate agency only if:

(1) The interstate agency filed with the Administrator within 120 days after October 18, 1972, a summary report of the current status of the State pollution control program, including the criteria used by the State in determining priority of treatment works.

(2) There is no federally-assumed enforcement as defined in section 309(a)(2) of the Clean Water Act in effect with respect to the interstate agency.